

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 860

Case No. 08-CD-103113

Charged Party

and

BALLAST CONSTRUCTION INC.

Employer

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18

Party-In-Interest

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 860 AND
LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 310

Case Nos. 08-CD-103657
08-CD-103660

Charged Parties

and

MR. EXCAVATOR

Employer

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18

Party-In-Interest

POST-HEARING BRIEF OF THE CHARGED PARTIES

Due to the government shutdown, post-hearing briefs in this matter were not due until October 21, 2013. Even so, the Employers and Party-in-Interest already filed and served their post-hearing briefs weeks ago. The Charged Parties admittedly have reviewed the other briefs and, instead of repeating the exact same arguments already provided by other parties, hereby adopt the Employers' Post-Hearing Briefs and incorporate them as if restated herein.

With respect to Employer Ballast, while a grievance arising out of a violation of a subcontracting clause will not generally trigger a 10(k) proceeding, *Laborers (Capitol Drilling Supplies)*, 318 NLRB 809 (1995) (union's action through grievance procedure to enforce claim against general contractor does not constitute a claim to the sub-contractor for the work in dispute), a 10(k) proceeding will be triggered if the grieving union makes a direct appeal to the subcontractor. *Local Union No. 71, IBEW*, 354 NLRB 344, 346 (2009). Here, there were several direct appeals to Ballast. First, Local 18 representatives approached a Ballast employee performing the work in the dispute -- i.e., a member of Laborers' Local 860 -- and claimed the work on several occasions on different jobs throughout Ohio. (Tr. 299, 314, 396-398, 400-401.) Contrary to Local 18's contention, evidence of a claim conveyed directly to an employer's employees is sufficient to establish reasonable cause to believe that there is a competing claim for the disputed work. See *Bricklayers (Cretex Construction Services, Inc.)*, 343 NLRB 1030, 1031-1032 (2004). Second, a Local 18 representative claimed the work in a conversation with Ballast's President. (Tr. 289, 301-304.) Although Local 18 disputes the validity of such testimony, it is well settled that "[i]n 10(k) proceedings, a conflict in testimony does not prevent the Board from finding evidence of reasonable cause and proceeding with a determination of the dispute." *Sheet Metal Workers Local 107 (Lathrop Co.)*, 276 NLRB 1200, 1202 fn. 3 (1985).

CONCLUSION

For the foregoing reasons, the Board should award the work in dispute to the Employers' employees who are represented by Laborers' Local 860 and Laborers' Local 310.

Dated this 21st day of October 2013 at Cincinnati, Ohio.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served this 21st day of October 2013 via the NLRB's electronic filing system upon the following:

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